

**SC Department of Health and Environmental Control
State Site Assessment and Remediation Program**

SECTION A - GENERAL INFORMATION

- A.1 Seven (7) copies of your complete resume package and any additional information you wish to include for consideration are required for evaluation. One original and six copies are acceptable. *Resumes presented for evaluation must represent the actual staff that will be used under the contract. ANY RESUME PACKAGE THAT DOES NOT INCLUDE ALL CRITERIA DESCRIBED IN A.1 - A.4 WILL BE DISQUALIFIED FROM SELECTION COMMITTEE REVIEW.*
- A.2 A complete resume package must also include a list of five (5) references of companies/individuals for which similar work has been performed. The references must include company name and address, telephone number, and a contact person currently employed with the company, and should be provided on a separate page in the package submittal that is titled as such. Information received from references may be used in the evaluation process.
- A.3 Resume packages will be received by the South Carolina Department of Health and Environmental Control, Bureau of Business Management until 5:00 p.m. on January 25, 2010.
- A.4 Individuals *MUST BE LICENSED/REGISTERED BY/IN THE STATE OF SOUTH CAROLINA* for any work or services, documentation and reports which require, *BY LAW OR REGULATION*, the approval or signature of a licensed or certified professional (i.e., Professional Engineer, Professional Geologist, Registered Land Surveyor, Certified Driller, Dry Cleaner Certification, etc.) The contractor must certify that any employees, agents, or other individuals performing under this contract are licensed or registered as applicable. *ANY CORPORATION, FIRM, OR SIMILAR ENTITY PRACTICING OR OFFERING TO PRACTICE PROFESSIONAL ENGINEERING OR LAND SURVEYING MUST HOLD A VALID CERTIFICATE OF AUTHORIZATION ISSUED BY THE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS.*
- A.5 The term of this contract shall be for one (1) year unless extended by SCDHEC. Said extension will not exceed an additional one (1) year period.

SECTION B - TERMS AND CONDITIONS

- B.1 Any person entering upon a site for performance of this contract or who examines the site or conducts any activity on or in the vicinity of the site does so at his or her own risk. The State of South Carolina assumes no liability whatsoever for any damage, loss or injury of any kind arising in any way from such entry for examination of, activity on, or in the vicinity of the site by any person or persons.
- B.2 **Emergencies**
In emergencies affecting the safety or protection of persons or property at the site, or adjacent thereto; the contractor, without special instruction or authorization from SCDHEC, is obligated to act to prevent or mitigate threatened damage, injury or loss. The Contractor shall give the SCDHEC Project Manager prompt written notice of any significant events and possible impact to the work plan and work site caused thereby.

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B.3 Licenses and Permits

a) The Contractor shall, without additional expense to the state, be responsible for obtaining and maintaining in good standing any necessary licenses and permits, and for complying with any applicable federal, state, county, and municipal laws, codes, ordinances, and regulations, in connection with the execution of the work; provided, however, that if permits required to perform the site work expire at the end of the site work, the Contractor shall identify the specific permit, its term expiration date, and cost in its site work plan and SCDHEC will consider allowing compensation for the cost.

b) The Contractor may assume reasonable cooperation from SCDHEC in obtaining all such approvals and permits.

B.4 Reasonable Care

The Contractor shall exercise reasonable care and use best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the site.

B.5 Inspection and Acceptance

The SCDHEC Project Manager is authorized to perform inspection and acceptance of work accomplished. Site inspection and acceptance will be performed at the location where contract work is performed.

B.6 SCDHEC Site Complaint and Cure Notice

a) If the SCDHEC Project Manager ascertains problems with any portion of the work and/or services as required in the contract, SCDHEC may issue a Site Complaint and Cure Notice to the Contractor. The Notice will identify specific concerns and provide a timeframe or deadline for curing (resolving) the problems. The Contractor will complete its portion of the Notice, indicating the cure and date of same and return to the Project Manager. SCDHEC will retain, as part of the Contractor's permanent file, a copy of any Site Complaint and Cure Notice and contractor's response. Failure to adequately resolve problems and respond to Notices may result in execution of the Termination clause contained herein.

b) Complaints and Defaults: By way of example, but not by limitation, the following may be grounds for issuance of a Site Complaint and Cure Notice or a Notice of Termination:

1. Performance of service required under the contract in other than a good and workman-like fashion or other than in accordance with reasonable and customary professional practice;
2. Failure to submit required reports or failure to submit reports in timely fashion;
3. Failure to maintain work schedules as set forth in the scope of work, except as may be excused under the Force Majeure clause of this contract, which shall be determined at SCDHEC's sole discretion.

B.7 Prime Contractor Responsibilities

The successful contractor will assume sole responsibility for the complete performance of work required herein. SCDHEC will consider the successful contractor to be the sole point of contact with

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regard to contractual matters and assumes no contractual obligation or liability to any subcontractors retained by the prime contractor.

B.8 Nonassignment

Any other provision of this contract notwithstanding, this contract shall not be assigned without the prior written approval of SCDHEC.

B.9 Losses

The Contractor and subcontractors shall be responsible for and make good at their own cost and expenses any and all loss of or damage of whatsoever nature to their equipment and material which is in the possession of the Contractor or the subcontractor for possible use in the clean-up activities, whether at the work site or elsewhere, arising or growing out of the performance of the work, except where the Contractor or subcontractor can affirmatively show that such loss or damage was proximately caused by the fault or negligence of agents or employees of the State acting within the scope of their authority.

B.10 Indemnification

Notwithstanding any limitation in this agreement, Contractor shall defend and indemnify the State of South Carolina, its instrumentalities, agencies (specifically including SCDHEC), departments, boards, political subdivisions and all their respective officers, agents and employees against all suits or claims of any nature (and all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any party which arise out of, or result in any way from any act or omission of Contractor, its subcontractors, their employees, workmen, servants or agents. Contractor shall be given written notice of any suit or claim. The State shall allow Contractor to defend such claim so long as such defense is diligently and capably prosecuted through legal counsel. The State shall allow Contractor to settle such suit or claim so long as (i) all settlement payments are made by (and any deferred settlement payments are the sole liability of) Contractor, and (ii) the settlement imposes no non-monetary obligation upon the State. The State shall not admit liability or agree to a settlement or other disposition of the suit or claim, in whole or in part, without the prior written consent of Contractor. The State shall reasonably cooperate with Contractor's defense of such suit or claim. The obligations of this paragraph shall survive termination of the parties' agreement.

B.11 Contractor shall also provide such defense and indemnification to entities and their officers, agents and employees when required for access agreements necessary to perform work under this contract.

B.12 Indemnity by the Contractor shall not apply to any actions arising solely out of:

1. Gross negligence or willful misconduct of the State or covered entity;
2. Compliance by the Contractor with specific directives issued by the [the Project manager or other specified DHEC personnel];
3. Material breach by the State of any warranties or other provisions hereof;
4. Existing pollution, contamination or release of toxic materials onsite at the initiation of this

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contract, except for any portion thereof which results from the Contractor's breach of this contract, negligence or willful misconduct, or results from any work performed by the Contractor off-site such as transportation, testing, or disposal.

B.13 Intellectual Property Infringement

(a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State of South Carolina, its instrumentalities, agencies (specifically including SCDHEC), departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to work under this contract. State shall reasonably cooperate with Contractor's defense of such claim.

(b) In the event an injunction or order shall be obtained against State's use of an item, process, or activity, or if in Contractor's opinion, the acquired item, process, or activity is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for State the right to continue to use, or have used, the acquired item, process, or activity or (2) replace or modify the acquired item, process or activity so that it becomes non-infringing but only if the modification or replacement does not adversely affect the State. If neither (1) nor (2), above, is practical, State may require that Contractor refund to State any charges paid by State therefore, and take all steps necessary to have State released from any further liability.

(c) Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor.

(d) As used in this paragraph, "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right.

B.14 Insurance

1. Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in South Carolina such insurance as will protect the Contractor from the types of claims set forth below which may arise out of or result from the Contractor's operations under the contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under worker's compensation, disability benefit and other similar employee benefit which are applicable to the work to be performed; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of the contractor's employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the

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Contractor's employees; (d) claims for damages insured by usual personal injury liability coverage; (e) claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; (g) claims for bodily injury or property damage arising out of completed operations; and (h) claims involving contractual liability insurance applicable to the Contractor's obligations under the provision entitled Indemnification.

2. Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the work until date of final payment. Coverage must include the following on a commercial basis: (i) Premises – Operations, (ii) Independent Contractor's Protective, (iii) Products and Completed Operations, (iv) Personal and Advertising Injury, (v) Contractual, including specific provision for contractor's obligations under the provision entitled Indemnification, (vi) Broad Form Property Damage including Completed Operations, and (vii) Owned, Non-owned and Hired Motor Vehicles.
3. The insurance required by this paragraph shall be written for not less than the following limits of liability or as required by law, whichever coverage is greater:

COMMERCIAL GENERAL LIABILITY:

General Aggregate (per project) \$1,000,000
Products/Completed Operations \$1,000,000
Personal and Advertising Injury \$1,000,000
Each Occurrence \$1,000,000
Fire Damage (Any one fire) \$ 50,000
Medical Expense (Any one person) \$ 5,000

BUSINESS AUTO LIABILITY (including All Owned, Nonowned, and Hired Vehicles):

Combined Single Limit \$1,000,000

OR

Bodily Injury & Property Damage (each) \$750,000

WORKER'S COMPENSATION:

State Statutory

Employers Liability \$100,000 Per Acc.

\$500,000 Disease, Policy Limit; \$100,000 Disease, Each Employee

MARINE INSURANCE

Covering liability incurred under the U.S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act, as appropriate, of at least \$300,000 where the hazardous substance response activity involves work on navigable waters.

4. Required Documentation. (a) Prior to commencement of the work, Contractor shall provide to

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the state a signed, original certificate of liability insurance (ACORD 25). The certificate shall identify the types of insurance, state the limits of liability for each type of coverage, include a provision for 30 days notice prior to cancellation, name SCDHEC Division of Site Assessment and Remediation and every other applicable using governmental unit (as identified on the cover page) as a Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis. (b) Prior to commencement of the work, Contractor shall provide to the state a written endorsement to the Contractor's general liability insurance policy that (i) names every applicable using governmental unit (as identified on the Cover Page) as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named governmental unit(s) has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the state as secondary and noncontributory. (c) Both the certificate and the endorsement must be received directly from either the Contractor's insurance agent or the insurance company.

5. Contractor shall provide a minimum of thirty (30) days written notice to the Procurement Officer of any proposed reduction of coverage limits (on account of revised limits or claims paid under the General Aggregate) or any substitution of insurance carriers.
6. The State's failure to demand either a certificate of insurance or written endorsement required by this paragraph is not a waiver of Contractor's obligations to obtain the required insurance.

B.15 Notice of Loss or Damage

As soon as practicable after the occurrence of any loss or damage in performance of this contract, written notice of such loss or damage shall be given by the Contractor to SCDHEC which notice shall contain full particulars of such loss or damage. If claim is made or suit is brought thereafter against the Contractor as the result or because of such event, the contractor shall immediately inform the State of every demand, notice, summons or other process received by it or its representatives. The Contractor shall cooperate with the State in regard to such matters.

B.16 Conflict of Interest

Contractor shall notify SCDHEC of any potential conflict of interest upon receipt of a NOTIFICATION OF SITE WORK.

B.17 Contract Amendments

Any amendments or other modifications to the provisions of the contract shall not be effective unless reduced to writing and approved by both parties.

B.18 Definitions

Except as otherwise provided herein, the following definitions are applicable to all parts of the solicitation.

Amendment – means a document issued to supplement the original RFQ document.

Change Order – means any written alteration in specifications, delivery point, rate of delivery, period

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of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

Conflict of Interest – means any relationship with an organization or individual that would prevent a contractor from offering an unbiased evaluation or reaching an unbiased decision of the work necessary to be performed or the extent of contamination at a particular site

Contract Modification – means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the Contractor.

Contractor – means the Offeror receiving an award as a result of this solicitation.

Cover Page – means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.

Notice to Proceed – means a notice from management issued by SCDHEC's Division of Site Assessment and Remediation that the contractor is approved to provide the requested services.

Notification of Site Work – means a notice from management issued by SCDHEC's Division of Site Assessment and Remediation that the contractor is being requested to provide the services stated in an accompanying Scope of Work. This may be a verbal notice in certain urgent situations.

Offer – means the proposal or qualifications package submitted in response to this solicitation.

Offeror – means the single legal entity submitting the offer.

Procurement Officer – means the person, or his/her successor, identified as such on the Cover Page.

Request for Qualifications – means this document, including all its parts, attachments, and any Amendments.

Scope of Work – means a description of the services to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

Subcontractor – means any person having a contract to perform work or render service to Contractor as part of the Contractor's agreement arising from this solicitation.

Work – means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

SECTION C - PROJECT INFORMATION PACKAGE

- C.1 At the time of work assignment, a NOTIFICATION OF SITE WORK along with the Scope of Work will be issued by SCDHEC to one of the selected contractors to prepare a Project Information Package. The level of effort (contents, costs, etc.) for the preparation of the Project Information Package will be negotiated with the contractor by SCDHEC.
- C.2 The Project Information Package (PIP) will generally include:
1. General approach to project
 2. Key personnel
 3. Proposed subcontractors and analytical services
 4. Time schedules
 5. Fee schedules
 6. Summary of costs to complete the project

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- C.3 Typical non-negotiable items that should be included in the fee schedule portion of the PIP include:
1. Full-day per-diem (meals and lodging) will be limited to \$85 per day, per person. All expenses for lodging, meals, telephone, laundry and other miscellaneous personal expenses are included in this daily rate. Meals for partial days will be reimbursed at a maximum rate of \$25 per day only when an employee is on overnight travel status (i.e., first and last days). Claims must state the departure time on the first day and the return time on the last day. Reimbursement is limited to the state travel meal allowances. Meals will not be paid for day trips.
 2. Mobilization/de-mobilization charges will be from the nearest office with that service.
 3. Overtime will only be paid for any time in excess of 40 hours per week on a SCDHEC job if overtime is approved by SCDHEC. A work week runs from 12:01 a.m. Saturday to 12:00 midnight Friday. Overtime rates greater than the hourly rate will not be paid for personnel billed at over \$60 per hour and will be limited to time and one-half of the hourly rate for less than \$60 per hour.
 4. Personnel and equipment unavoidable standby rates of three hours or more that are documented and demonstrated to the satisfaction of the SCDHEC Project Manager will be paid at a maximum of one-half (1/2) normal rates for all down time.
 5. Personal protective equipment charges will be paid ONLY for Levels A, B, and C.
 6. Mileage reimbursement for passenger vehicles will be limited to the state reimbursement allowance.
 7. No mark-up will be paid on expendables, consumables, equipment rental, laboratory charges, etc. Mark-up on sub-contractors, if allowed, will be negotiated on a case-by-case basis.
- C.4 After review, SCDHEC may request additional information or modification of the Project Information Package (PIP.). Subsequent to the review by SCDHEC, the PIP will be either accepted or rejected. If the PIP is rejected, another selected contractor will be requested to submit a Project Information Package. When a PIP is accepted, a NOTICE TO PROCEED will be issued.
- C.5 The agreement between the parties consists of this contract document, the NOTIFICATION OF SITE WORK, the Scope of Work, and an approved Project Information Package for which a NOTICE TO PROCEED has been issued pursuant to Section C.4, which together shall constitute the entire agreement between SCDHEC and the selected contractor.
- C.6 The Contractor will, if required, assist SCDHEC in presenting and defending the conclusions of investigations and actions conducted under this contract during meetings with property owner(s), agents and other involved parties in administrative appeals and/or during any subsequent litigation.

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SECTION D - LABORATORY TESTING

- D.1 All testing procedures must be EPA approved if SCDHEC determines that it is appropriate and all laboratories (whether in-state or out-of-South Carolina) must be certified by the South Carolina Department of Health and Environmental Control for the type(s) of analysis being conducted. Some analytical work will require that the laboratory participate in the CLP program.
- D.2 The Contractor's or subcontracted laboratory must be able to perform at a minimum:
1. Target Compound List/Target Analyte List
 2. Tentatively Identified Compounds (i.e., search for unidentified compounds)
 3. Toxicity Characteristic Leaching Procedure (TCLP)
 4. Detection limits equal to Drinking Water Standards
- D.3 The Contractor's or subcontracted commercial laboratories must be capable of providing twenty-four hour turn-around time when SCDHEC determines the analytical work/procedures demand processing within twenty-four hours.

SECTION E - INVOICES AND REMITTANCE

- E.1 SCDHEC shall pay the Contractor for specific site work performed in accordance with the Fee Schedule detailed and approved in the PIP. SCDHEC will accept and pay invoices from the prime contractor only (not subcontractors).
- E.2 Contractor shall submit invoices for actual work performed and completed. Invoices must be itemized detailing the work performed during the invoice period (at least monthly) with the applicable unit charges. SCDHEC reserves the right to require invoicing on a more frequent basis for certain work. The invoice will be submitted, with documentation, to *SCDHEC, EQC BUREAU OF LAND AND WASTE MANAGEMENT, 2600 Bull St., Columbia, SC, 29201. ATTN: Manager, State Remediation Section, or designee*. Dry Cleaner invoices should be submitted, with documentation, to *ATTN: Assistant Director, Division of Site Assessment and Remediation, or designee*.
- E.3 All invoices must be itemized and documentation must be in the same sequence as listed on the invoice. Documentation must be clearly labeled and identifiable. The invoice must be of sufficient detail to allow SCDHEC review and approval for payment. All receipts and subcontractor invoices necessary to maintain adequate documentation are to be included with the Contractor's invoice. SCDHEC reserves the right to request, at any time, documentation of a subcontractor's work and costs. Invoices without supporting documentation will be returned to Contractor. Copies of office logs must be included with invoices. SCDHEC prefers original documentation be attached to invoices as documentation for payment.
- E.4 Contractor shall submit a separate invoice for each site.

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- E.5 Contractor must complete and submit daily cost summaries that document costs incurred under the contract, to include all fieldwork and office activities. Office logs, briefly describing office activities, shall be maintained on a daily basis. The daily cost summary must identify all billable items during a workday. A daily cost summary completed during field activities must be submitted no later than noon the following day. Each daily cost summary for field activities must be signed by the Contractor's Field Project Manager and approved by the SCDHEC Project Manager. Failure to submit daily cost summaries in a timely manner may result in the issuance of a Site Complaint and Cure Notice.
- E.6 Contractor shall submit final invoices and required documentation for work performed prior to termination pursuant to Section F.10 of this contract within ninety (90) days of termination.
- E.7 SCDHEC shall make payments to the Contractor for undisputed work in accordance with Title 29, Chapter 6 of the SC Code of Laws, as amended.
- E.8 The Contractor shall make payments to its subcontractors in accordance with Title 29, Chapter 6 of the SC Code of Laws, as amended.
- E.9 CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS

(a)(1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals-

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

2. "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to

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contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraph (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.

SECTION F - ADDITIONAL CONTRACTUAL OBLIGATIONS

F.1 Force Majeure

The Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor and/or subcontractor. If the failure to perform is caused by the default of a subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other SCDHEC approved subcontractor(s) in sufficient time to allow the Contractor to meet the required schedule.

F.2 S.C. Law Clause

Upon award of a contract under this procurement, the person, partnership, association, or corporation to whom the award is made must comply with the laws of South Carolina that require such person or entity to be authorized and/or licensed to do business in this State. By submission of this signed contract, the Contractor agrees to be bound by the provisions of the South Carolina Consolidated Procurement Code, Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, and to the jurisdiction and process of the administrative tribunals and courts of the State of South Carolina, as to all matters and disputes arising or to arise under the contract and the performance thereof, including any questions as to the liability for taxes, licenses, or fees levied by the State of South Carolina. This contract shall be interpreted, enforced and governed by the laws of the State of South Carolina.

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F.3 Affirmative Action

The Contractor will take affirmative action in complying with all federal and state requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin or physical handicap.

F.4 The Contractor must agree to make positive efforts to use small and minority owned business and individuals. SCDHEC Form 128 will be provided to the contractor for quarterly reporting of use.

F.5 EPA Funding

In instances where EPA funds are used for payment of any services required from this contract, the Contractor ensures to the fullest extent possible that at least 8% of all procurements made with funds provided under this contract will be made from organizations owned or controlled by socially and economically disadvantaged individuals, women, and historically black colleges and universities. The Contractor agrees to report this utilization quarterly to SCDHEC.

F.6 Tax Credit Availability

Section 11-35-5230 (B) (1) of the South Carolina Procurement Code provides that firms with state contracts that subcontract with minority firms shall be eligible for an income tax credit equal to four (4) percent of the payments to minority subcontractors. Such subcontractors must be certified as to the criteria of a minority firm as defined in Section 11-35-5010 of the South Carolina Procurement Code and regulations that may be promulgated thereunder. Firms interested in taking advantage of this opportunity when responding to a solicitation for the award of a state contract should contact the Office of Small and Minority Business Assistance, Edgar A. Brown Building, 1205 Pendleton Street, Columbia, South Carolina 29201. This organization is in the position to identify certified minority businesses and the service specialization of each.

F.7 Termination

This contract may be terminated by SCDHEC by providing to the Contractor thirty (30) days advance notice in writing, except as follows:

- A. Convenience: This contract may be terminated by SCDHEC at any time by providing thirty (30) days written notice. In the event that this contract is terminated or canceled upon request and for the convenience of SCDHEC without thirty (30) days written notice, then SCDHEC shall negotiate reasonable termination costs, if applicable, for work being performed. Unless the termination so provides, however, a termination for convenience shall not operate to terminate any work assignments issued prior to the effective date of termination.
- B. Cause: Upon termination by SCDHEC for cause, default or negligence on the part of the Contractor, neither SCDHEC nor the State shall be liable for any termination costs; the thirty (30) days written notice requirement is waived; and default provisions shall apply. SCDHEC's failure to exercise or enforce its rights to terminate for default on one or more occasions does not constitute a waiver of such right at any time thereafter.

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- C. At a particular site upon which the Contractor has been awarded a work assignment, SCDHEC may terminate that work assignment upon immediate notice without further obligation. If termination of a work assignment occurs, SCDHEC and the Contractor shall negotiate reasonable termination costs, if applicable, for work being performed. Termination pursuant to this section shall not affect other work assignments the Contractor may have been awarded.
- D. This contract is voidable and subject to immediate termination without 30 days written notice by SCDHEC upon the Contractor's insolvency, including the filing of proceedings in bankruptcy.
- E. Non-Appropriations: In the event sufficient federal and/or state appropriations are not made to pay the charges under the contract, SCDHEC shall immediately notify the Contractor of such occurrence, and this contract shall terminate without any obligation of SCDHEC and/or the State of South Carolina.

F.9 Waiver of Claims for Consequential Damages

- 1. The Contractor and State waive any and all claims, known or unknown, against each other for consequential damages arising out of or relating to this contract. This mutual waiver includes:
 - A. Damages incurred by the state for loss of income, profit, financing, business and reputation, management or employee productivity or of the services of such persons; and
 - B. Damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the work.
- 2. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination pursuant to a termination provision of this contract. Nothing contained in this paragraph shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the terms of this contract. This paragraph does not apply to any claim for equitable or contractual indemnification.

F.10 Ownership of Material

Copyright and ownership of all data, material and documentation originated and prepared for SCDHEC pursuant to this contract shall belong exclusively to SCDHEC. Reproduction in any form is prohibited without express written consent of SCDHEC.

F.11 Compliance with State/Federal Requirements

Contractor(s) shall be responsible for conducting all activities in compliance with applicable local, state and federal laws and regulations and published EPA guidance documents. When both State and Federal requirements apply, the more restrictive requirement(s) shall be followed. Contractor must have an occupational safety and health program consistent with 29CFR1910.120 and shall insure compliance with this program and with any applicable provisions of the Occupational Safety and

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Health Act and State occupational safety and health laws.

F.12 Drug-Free Work Place, Certification

By submitting an offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended

F.13 Confidentiality Policy

The Contractor agrees to abide by SCDHEC's policy of confidentiality which states that all information as to personal facts and circumstances given or made available to employees and/or contractors of SCDHEC in administration of programs shall be held confidential and shall not be divulged without express written consent of the program, service or individual(s) to which it pertains. Any reports, records, information, or data given to, prepared, or assembled by the successful Contractor under this contract shall be kept confidential and shall not be made available to any individual or organization without the prior express written consent of SCDHEC. Individual, organizational and/or media requests must be referred to SCDHEC. Contractor is responsible for ensuring that confidential information released to Contractor's employees/agents is limited to the confidential information that is minimally necessary to such employees/agents who have a legitimate need for the information in the performance of this contract. Any unauthorized disclosure of confidential information may result in termination of this contract for cause.

F.14 Contractor's Confidential Information

Disclosure of this RFQ, the contents of this RFQ, or any documents submitted in accordance with this contract, is controlled by S.C. Code Ann. §§ 30-4-10, *et seq.* (2007), the South Carolina Freedom of Information Act. For every document a Contractor submits in regard to this contract or any subsequent NOTIFICATION OF SITE WORK that a Contractor contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in S.C. Code Ann. § 30-4-40(a)(1)(2006), or (b) privileged and confidential, as that phrase is used in S.C. Code Ann. § 11-35-410 (Supp. 2006), the disclosing entity must separately mark a page or portion thereof with the word "CONFIDENTIAL." For every document a Contractor submits in regard to this Agreement contending that it contains a trade secret as that term is defined by S.C. Code Ann. § 39-8-20 (Supp. 2006) of the South Carolina Trade Secrets Act, the disclosing entity must separately mark with the words "TRADE SECRET" on every page, or portion thereof, containing a claimed trade secret. All markings must be conspicuous using color, bold, underlining, or some other method to conspicuously distinguish the mark from the non-privileged text. Upon receiving a request under the Freedom of Information Act that involves material that a Contractor has designated as "TRADE SECRET" or "CONFIDENTIAL," SCDHEC will notify the Contractor that a request has been received and that such material shall be released unless the Contractor obtains an order from a court of competent jurisdiction preventing SCDHEC from doing so."

F.15 Auditing and Inspection Requirements

Records with respect to all matters covered by this award shall be retained by the Contractor for five (5) years after the end of the contract period and shall be available for audit and inspection at any time such audits are deemed necessary by SCDHEC. If an audit has begun but is not completed at the end of the five (5) year period, or if audit findings have not been resolved at the end of the five (5) year

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period, the record shall be retained until resolution of the audit findings. . The term "records" means any books or records that relate to cost or pricing data submitted pursuant to this contract. At reasonable times, SCDHEC may inspect any site upon which a Contractor is performing Work under this Contract and any part of a Contractor's place of business which is related to performance of the Work.

F.16 Lobbyist Clause

By accepting award of this contract, the successful contractor certifies that it: (a) has neither used nor will use any appropriated funds for payments to lobbyists; (b) will disclose the name, address, payment details and purpose of any agreement with lobbyists whom contractors or its sub-tier contractor(s) or sub-grantee(s) will pay with profits or non-appropriated funds on or after 12/22/89 and; (c) will file quarterly updates about the use of lobbyists if material changes occur in their use.

F.17 Ethics Act

By submitting an Offer, the Contractor certifies that the Contractor is in compliance with South Carolina's Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended. The following statutes require special attention: (a) Offering, giving, soliciting, or receiving anything of value to influence action of public employee – Section 8-13-790, (b) Recovery of kickbacks – Section 8-13-790, (c) Offering, soliciting, or receiving money for advice or assistance of public official – Section 8-13-720, (d) Use or disclosure of confidential information – Section 8-13-725, and (e) Persons hired to assist in the preparation of specifications or evaluation of bids – Section 8-13-1150.

F.18 Final Release

The Contractor shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the State, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract.